No. 97-501

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

RANDALL RICCI,

Petitioner,

v.

VILLAGE OF ARLINGTON HEIGHTS
A MUNICIPAL CORPORATION,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR PETITIONER

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At issue in this case is whether a municipality may, consistent with the Fourth Amendment, require its police officers to make full custodial arrests for violations of fine-only ordinances that do not involve a breach of the peace. Fewer than ten states would permit respondent's mandatory arrest policy and no municipality in the nation aside from respondent appears to have been adopted such a policy.

Respondent does not seek to defend the mandatory nature of its arrest policy. Instead, respondent boldly urges that a holding for petitioner would mean that police will never in any circumstances be able to make a full custodial arrest for violation of a fine-only offense. This is incorrect. We do not dispute that a peace officer may make a

warrantless arrest for a fine-only infraction in appropriate circumstances; our complaint is with respondent's policy that mandates full custodial arrests for fine-only infractions that involve neither a breach of the peace nor a need to assure presence at trial.

Respondent is unable to provide any sensible justification for its mandatory arrest policy. There is neither authority nor empirical data to support respondent's extravagant claim that its full custodial arrest policy increases the number of arrestees who appear for trial. This hypothesis was rejected by the American Law Institute in its Model Code of Pre-Arraignment Procedure. It also is contrary to the practice in the City of Chicago, the municipality which respondent uses as an example of a city which would suffer extraordinary harm if police officers are not granted unrestricted arrest powers for fine-only violations: Chicago expressly discourages its police officers from making full custodial arrests for fine-only infractions that do not involve "any act which caused or threatens injury or harm to any person, or loss or damage to any property." Chicago Police Department General Order 87-9, reproduced in the Addendum, *infra*.

Acceptance of respondent's view that arrests for fine-only infractions may be based on probable cause without any exigency would eliminate all common-law limitations on warrantless arrests in non-felony cases, thereby resurrecting the general warrants prohibited by the Fourth Amendment.

In contrast to respondent's mandatory arrest policy, the police rules of the City of Chicago (reproduced in the Addendum *infra*) prohibit mandatory arrests in fine-only ordinance violation cases and set out clear and unambiguous guidelines for when full custodial arrests may be made for violation of fine-only violations. Local municipalities should remain free to experiment with innovative custodial arrest policies, but the Fourth Amendment prohibits the mandatory

custodial arrest policy at issue in this case.

I. Respondent's Business License Ordinance Is a Revenue Generating Device Unrelated to Public Safety

Respondent vastly overstates the scope of its business license ordinance, describing it as a device to "ensure the safety of business premises and to prevent fraud and abuse." (Resp.Br. 13.) But nothing in the ordinance (App. 15-16) regulates the manner in which any business is conducted. The focus of the ordinance is on the fee required for a license, which is determined by the "square footage including retail areas and indoor storage areas" used by the business. (App. 16.) Although the ordinance requires businesses to comply with the municipality's "use and occupancy" standards, (Appendix 15), these standards apply to any business irrespective of issuance of a business license.

Petitioner's wife paid the one hundred dollar fee and obtained a business license while petitioner was in custody. (Pet.App. 3.) The ease with which petitioner obtained the license is strong evidence of the lack of control respondent exercises over local businesses who apply for a license.

Further evidence that qualifying for a business license is a mere formality is that the ordinance violation charge against petitioner was dismissed without the imposition of any sanction at the first court appearance. (App. 3.) Such dismissals are routine and had been expected by the arresting officers.[1] (App. 73-74.)

The government, in its amicus brief, asks the Court to disregard the civil nature of the ordinance for which

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1. There is no support in the record for respondent's claim that petitioner believed that he was facing a "substantial fine." (Resp.Br. 9.)

petitioner was arrested.[2] (Gov't Br. 19 n.15.) The actual nature of the violation for which petitioner was arrested is a "predicate to an intelligent resolution" of the question presented, and therefore "fairly included therein." Supreme Court Rule 14.1(a); *Ohio v. Robinette*, 117 S.Ct. 417, 420 (1996) quoting *Vance v. Terrazas*, 444 U.S. 252, 258-259, n. 5 (1980)). Determination of the reasonableness of respondent's mandatory arrest policy requires consideration of the civil nature of respondent's business license ordinance.

The civil nature of respondent's business license ordinance supports the view of amicus Institute for Justice that "[d]isallowing arrests for violations of fine-only licensing ordinances would not in any way affect the ability of the government to enforce health and safety laws." (Brief of Institute of Justice 10 n.8.)

Petitioner does not challenge a municipality's power to require licenses of local businesses. Nor do we question a municipality's power to adopt policies to encourage compliance with its ordinance. Our complaint is with respondent's choice of full custodial arrests as the instrument of compliance. Respondent's policy to require arrests regardless of circumstances and independent of need is contrary to the core

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2. The government mistakenly reads the first question presented ("Does the reasonableness clause of the Fourth Amendment incorporate the common law rule prohibiting warrantless arrests in misdemeanor cases that do not involve a breach of the peace?") as a concession that petitioner was arrested for a misdemeanor offense. (Gov't Br. 19 n.15.) Petitioner has consistently referred to the ordinance as a "fine-only business license ordinance." Neither in this Court nor in the court of appeals has petitioner characterized the ordinance as a misdemeanor.

values of the Fourth Amendment.

II. Respondent Is Unable to Provide any Sensible Justification for Its Mandatory Arrest Policy

Respondent offers two justifications for its mandatory arrest policy. Neither rationale justifies the complete rejection of all common law limitations on warrantless arrests in non-felony cases.

First, without any citation of authority and without any empirical data, respondent asserts that permitting its officers to issue citations for fine-only infractions that do not involve any breach of the peace would "greatly increase the numbers of suspects who do not appear for trial." (Resp.Br. 16.) Respondent's extravagant claims about the need to make arrests in all fine-only cases was rejected by the American Law Institute in its comprehensive study of pre-arraignment procedure. ALI Model Code of Pre-Arraignment Procedure, §§120.1, 120.2. It also is belied by the adoption of citation systems in many jurisdictions, including respondent's neighbor, the City of Chicago. As we explain *infra* at 12-15, Chicago expressly discourages its police officers from making full custodial arrests for fine-only infractions that do not involve "any act which caused or threatens injury or harm to any person, or loss or damage to any property." Chicago Police Department General Order 87-9, reproduced in the Addendum, *infra*.

Second, again without any empirical data, respondent asserts that requiring full custodial arrests for violation of its business license ordinance is part of its "order maintenance" philosophy. The essence of this controversial theory, as explained by two of its leading proponents, is that "disorderly behavior . . . can threaten the social order by creating fear and criminogenic conditions." George Kelling and Catherine M. Coles, *Fixing Broken Windows: Restoring Order and Reducing Crime in Our Communities* 15 (1996). Operating a legitimate business from an office does not fall into this spectrum of "disorder." Moreover, a mandatory

arrest policy is the antithesis of the "order maintenance" approach.

The careful exercise of police discretion — rather than a mandatory arrest policy — is one of the keystones of the "order maintenance" movement: as stated by Kelling and Coles, "developing strong guidelines that codify appropriate measures of police discretion is an essential ingredient to any attempt to restore order." *Fixing Broken Windows* at 193.

Recent events provide ample examples of the dangers of unnecessary use of the arrest power that is part of the rule urged by respondent. Full custodial arrests for jaywalking often result in claims of the use of excessive force and give rise to citizen resentment and police excesses.[3] While it might be argued that the discretion to make jaywalking

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3. See, e.g., "City Council Worried About Lawsuits Against Police," Columbus Dispatch, January 29, 1998, 1998 WL 5688892 (reporting settlement of lawsuit arising out of a 1995 jaywalking arrest); "City to Pay $39,000 in Jaywalking Lawsuit," Columbus Dispatch, January 24, 1998, 1998 WL 5688520 (reporting settlement of lawsuit arising out of 1994 jaywalking arrest); "Donald W. Hunter Says He Just Wanted Apology," Portland Oregonian, July 30, 1993, 1993 WL 6927022 (reporting jury verdict in favor of plaintiff on jaywalking arrest claim); "The Sweetness and the Sorrow of D.C.'s Rules of the Road; Passers-by Become Indignant Over a Jaywalker's Arrest," Washington Post, December 9, 1988, 1988 WL 2013482; "Harrowing D.C. Jaywalking Arrest Described," Washington Post, August 29, 1990, 1990 WL 2112722; "Rapper Files Brutality Suit Over Jaywalking Ticket Dispute," Oakland Tribune, November 13, 1991, 1991 WL 8230763 (suit subsequently settled for $40,00); "Doctor Says D.C. Police Abused Him; Mistreatment Alleged in Jaywalking Arrest," Washington Post, March 23, 1991, 1991 WL 2149471.

arrests is essential to an "order maintenance" approach, this argument has no place in this case, where the police knew for two days before making any arrest that petitioner was operating a business without a license and were required, by respondent's policy, to make a full custodial arrest regardless of need.

Paradoxically, and perhaps unintentionally, respondent offers a persuasive argument against its mandatory arrest policy. As respondent states, police officers who have the discretion to issue a citation for a fine-only offense are likely to do so unless there is some exigency (Resp.Br. 23) because police officers "are likely to avoid arresting individuals for less serious offenses." (Resp.Br. 30.) Respondent's mandatory arrest policy, however, removes this discretion. Instead of acting as a "necessary check" (Resp.Br. 36), respondent's mandatory arrest policy requires full custodial arrests, even when — as in this case — it is perfectly clear to the arresting officers that the "offender" is operating a lawful business and will promptly comply with a licensing revenue ordinance. The lack of discretion in respondent's policy renders it constitutionally unreasonable.

III. The Arrest Policy Cannot Be Justified as a Minor Intrusion

Respondent seeks to support its mandatory arrest policy by attempting to minimize the intrusiveness of the arrest. (Resp.Br. 10.) Contrary to respondent's position, there is wide agreement with the conclusions of the American Law Institute that:

> Being arrested and held by the police, even if for a few hours is, for most persons, awesome and frightening. Unlike other occasions, on which one may be authoritatively required to be somewhere or do something, an arrest abruptly subjects a person to constraint and removes him to unfamiliar and threatening surroundings. Moreover, this exercise of control over the person depends not just on his willingness to comply with an impersonal directive, such as a summons

> or subpoena, but on an order which a policeman issues on the spot and stands ready then and there to back up with force. The security of the individual requires that so abrupt and intrusive an authority be granted to public officials only on a guarded basis.

ALI Model Code of Pre-Arraignment Procedure (1975), 290-91.

The government correctly points out that even a "short custodial arrest" is a seizure under the Fourth Amendment. (Gov't.Br. 24.) Respondent's attempt to justify its mandatory arrest policy as a minor intrusion must be rejected.

IV. Respondent's Arrest Policy Resurrects the General Warrants Prohibited by the Fourth Amendment

Respondent correctly states that at common law, warrantless arrests for misdemeanors were "made not so much for the purpose of bringing the offender to justice as in order to preserve the peace." (Resp.Br. 39.) Absent a breach of the peace, arrests for misdemeanors were made pursuant to specific arrest warrants.[4]

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4. As summarized by Professor Cuddihy in what Justice O'Connor recently described in *Vernonia School District 47J v. Acton*, 515 U.S. 646, 669 (1995) (dissenting opinion) as "one of the most exhaustive analyses of the original meaning of the Fourth Amendment ever undertaken,"

> Between 1683 and 1685, the magistrates of Haverhill, Massachusetts wrote six such warrants for infractions that included laziness, theft, assault, profanity, and unlawful impregnation. Similar warrants issued elsewhere with respect to bootlegging, tumultuous speech, and non-acceptance at public worship.

W. Cuddihy, *The Fourth Amendment: Origins and Original Meaning*, pt. 2, p. 665-66 (Ph.D. Dissertation at Claremont Graduate School).

Respondent asserts that the common law limitations on arrests in non-felony cases are an "archaic 'handicap to our modern law enforcement officers'" (Resp.Br. 40), quoting from Fisher, *Laws of Arrest* 128 (1967), and argues that the Court should disregard all common law limitations on warrantless arrests in non-felony cases.[5] The broad rule urged by respondent would resurrect the wholesale arrests which accompanied execution of the general search warrants and writs of assistance in colonial times.

General warrants "allowed the bearer to search and arrest as he pleased."[6] Execution of the general warrant at issue in *Leach v. Three of the King's Messengers*, 19 How.St.Tr. 1001 (1765) resulted in the arrest of Leach, his "fourteen journeymen and servants," George Kearsley, his

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5. As part of its argument, respondent contends that the Court may not consider the warrant clause of the Fourth Amendment because petitioner "waived" this issue in the Court of Appeals. (Resp.Br. 23.) Respondent, however, cannot now rely on any waiver argument because it did not, as required by Rule 15.2 of this Court, assert this claim in its brief in opposition to the petition for writ of certiorari. *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 815-16 (1985). Moreover, the "waiver" holding of the Court of Appeals is unsupportable: "waiver" does not apply to particular legal theories that may be advanced in support of an issue that is properly before the court. *Kamen v. Kemper Financial Services, Inc.*, 500 U.S. 90, 99 (1991). The Seventh Circuit upheld respondent's mandatory arrest policy in part because, in its view, "a neutral magistrate following Illinois law would surely have issued a warrant in this case." (Pet.App. 8.) In light of this holding, the waiver language of the court below (Pet.App. 8 n.1) is not entitled to any weight.

6. W. Cuddihy, *The Fourth Amendment: Origins and Original Meaning*, pt. 1, p. 269.

family, and "so many of Kearsley's employees — even his aged father — that he was compelled to entrust his business to an errand boy."[7]

Blackstone, whom respondent correctly describes as having "unparalleled" stature among the colonists (Resp.Br. 43), roundly condemned general warrants of arrest:

> A *general* warrant to apprehend all persons suspected, without naming or particularly describing any person in special, is illegal and void for its uncertainty; for it is the duty of the magistrate, and ought not to be left to the officer, to judge of the ground of suspicion. And a warrant to apprehend all persons guilty of a crime therein specified, is no legal warrant: for the point, upon which its authority rests, is a fact to be decided on a subsequent trial; namely, whether the person apprehended thereupon be really guilty or not.

4 *Blackstone's Commentaries* *288.

The government, in its amicus brief, recognizes that the vast majority of states retain some restrictions on warrantless arrests in non-felony cases. These restrictions, as the government concedes, include the "in the presence of" requirement, (Gov't Br. 8-9) as well as various statutory codifications of a "breach of the peace" or exigent circumstances limitation. (Gov't Br. 9.) In our view, these restrictions — which are found in most federal statutes (Gov't

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7. W. Cuddihy, *supra*, pt. 2, p. 888-89. It was subsequently held that the messengers lacked probable cause to arrest the servants and family members "because, even if the general warrant from Lord Halifax had been valid, Leach's employees were not among the printers, publishers, or authors of the forty-fifth issue of the North Briton to whom that warrant referred." Id. at 1194.

Br. 10) and in the statutes and caselaw of all but eight states — reflect a contemporary translation of the common-law restrictions on warrantless arrests in non-felony cases.

The government argues, however, that the states are free to abolish common law restrictions on warrantless arrests in non-felony cases without adopting any comparable restrictions on police discretion. (Gov't Br. 8.) The government is unable to identify the source of this power, other than to cite to the dissenting opinion of Mr. Justice White in *Welsh v. Wisconsin*, 466 U.S. 740, 756 (1984) and to a law review article written before *Wolf v. Colorado*, 338 U.S. 25 (1949) when the Court first held that the Fourth Amendment was applicable to the states.

There is no merit in respondent's suggestion that the framers intended that the Fourth Amendment authorize "democratically elected legislators" to have the last word on the meaning of reasonableness. (Resp.Br. 28). Respondent was able to adopt its mandatory arrest policy because the Illinois legislators have sought to remove all common-law limitations on warrantless arrests in non-felony cases. This is precisely the evil addressed by the Fourth Amendment:

> The Fourth Amendment was adopted in view of long misuse of power in the matter of searches and seizures both in England and the colonies; and the assurance against any revival of it, so carefully embodied in the fundamental law, is not to be impaired by judicial sanction of equivocal methods, which, regarded superficially, may seem to escape the challenge of illegality but which, in reality, strike at the substance of the constitutional right.

United States v. Byars, 278 U.S. 28, 33 (1927).

V. Respondent's Mandatory Arrest Policy Is the Extreme Minority Rule

Respondent is mistaken in asserting that striking down its mandatory arrest policy "would have the effect of declaring unconstitutional, in whole or part, the laws of at least 42 states." (Resp.Br. 25.)

First, only eight states — including Illinois — permit full custodial arrests without warrant in non-felony cases on the same basis as in felony cases. (Pet.Br. 13 n.15.)

Second, none of these eight states *require* full custodial arrests in fine-only ordinance cases. Respondent's mandatory arrest policy is not compelled by Illinois law.

A ruling in petitioner's favor against respondent's mandatory arrest policy would not render unconstitutional the law of any state. Any local policy that *requires* a full custodial arrest for fine-only infractions that did not involve a breach of the peace would be constitutionally suspect, but this is precisely as the framers intended.

VI. The Chicago Police Rules Demonstrate a Workable Alternative to a Mandatory Arrest Policy for Fine-Only Infractions

Respondent seeks to defend its mandatory arrest policy by enumerating several fine-only ordinance violations of the City of Chicago.[8] (Resp.Br. 20, 35.) Respondent argues that the seriousness of the conduct prohibited by these ordinances shows the need for full custodial arrests for fine-only infractions. Respondent's argument, though, misses the point of

8. Respondent has miscited two of these ordinances: soliciting for prostitution is prohibited by Section 8-8-150, rather than 8-4-130; noise pollution is prohibited by Section 11-4-1110 rather than 10-4-1110.

this case: we do not seek a *per se* rule flatly prohibiting full custodial arrests for violation of fine-only infractions. We agree that a peace officer may make a warrantless arrest for a fine-only infraction in appropriate circumstances; our complaint is with respondent's policy that mandates full custodial arrests for fine-only infractions that do not involve any breach of the peace or a need to assure presence at trial.

With perhaps two exceptions, the Chicago ordinances collected by respondent involve conduct that is punishable by imprisonment under state law. Possession of burglar tools (Resp.Br. 19-20) is a felony, 720 ILCS 5/19-2. Trespass (Resp. Br. 19) is a misdemeanor punishable by imprisonment. 720 ILCS 5/21-3. An officer who observes a person unlawfully "manipulating a telephone coin box" (Resp.Br. 20) could make an arrest for the felony of burglary. *People v. Smith*, 264 Ill.App.3d 82, 87, 637 N.E.2d 1128, 1131 (1994).

Most of the "quality of life" infractions collected by respondent (Resp.Br. 35) are also violations of state law that are punishable by imprisonment.[9] But any rule that requires a

9. Damage to public property, §8-4-120, and defacing public property, §10-8-380, are covered by the state criminal damage to property statute, which is a misdemeanor punishable by imprisonment that may be elevated to a felony. 720 ILCS 5/21-1. Soliciting for prostitution, §8-8-150, miscited as §8-4-130, is a misdemeanor punishable by imprisonment that may be elevated to a felony. 720 ILCS 5/11-15. Indecent exposure, §8-8-080, is a misdemeanor if committed with the intent to arouse or to satisfy sexual desire. 720 ILCS 5/11-9. Gambling, §8-12-010, is a potential felony. 720 ILCS 5/28-1. Drinking by minors, §8-16-05, and possession of alcohol by a minor, §8-16-060, are misdemeanors punishable by imprisonment. 235 ILCS 5/16-6. Discharge of a firearm, §8-24-01, could be a felony if done recklessly, 720 ILCS 5/24-2; possession of a firearm is generally a felony, 720 ILCS 5/24-1.

full custodial arrest for possession of spray paint or marker by a person under 18, §8-16-096, (Resp.Br. 35) would also require a full custodial arrest for skating in the street, Chicago Municipal Code §10-8-410, dropping facial tissues upon the public way, Chicago Municipal Code §7-287-170, or possessing an unregistered bicycle. Chicago Municipal Code §9-120-020. While we would expect respondent to argue that full custodial arrests for spitting, Chicago Municipal Code, §7-28-160, would enhance "the quality of life in an urban environment," (Resp.Br. 35), the same cannot be said for arrests for violation of the Chicago ordinance that prohibits matchmaking.[10]

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10. Chicago Municipal Code §8-4-340 provides as follows:

Promotion of Marriage

No person shall seek, solicit, accept, or receive, or attempt to seek, solicit, accept, or receive, any fee, charge, commission, brokerage or any other financial or other valuable consideration from another for services or pretended services in and about aiding, encouraging, interfering, or negotiating between a man and a woman for the purpose of promoting a marriage or an acquaintanceship intended to result in marriage.

No person shall advertise by display, circular, handbill, or in any newspaper, periodical, magazine, or other publication, or by another other means, to act as agent, assistant, go between, or mediator between a man and a woman, for any fee, charge, commission, brokerage, or other financial or other valuable consideration, for the purpose of promoting a marriage or an acquaintanceship intended to result in marriage.

Any person violating any provision of this section shall be subject to a fine of not less than $100.00 nor more than $200.00 for each offense.

The very Chicago ordinances that respondent cites are a clear refutation of respondent's position — while Illinois law permits Chicago to require arrests for each of these fine-only infractions, none of these ordinances is enforced by a mandatory arrest policy: the Chicago police department has expressly forbidden mandatory arrests for violation of fine-only ordinance violations.

Chicago Police Department General Order 87-9 (as amended by General Order 87-9a) sets out the municipal policy for issuance of citations, rather than custodial arrest. The policy encourages issuance of citations for fine-only violations, (General Order 87-9, II.A, Addendum *infra* at 1), and sets out clear guidelines for when a full custodial arrest should be made. (Addendum 2-4.) Moreover, contrary to respondent's fears (Resp. Br. 21), the Chicago police department has been able to define "breach of the peace" in a simple and understandable manner. Under the general order, "a breach of the peace is any act which caused or threatens injury or harm to any person, or loss of damage to any property."

The American Law Institute, in its Model Code of Pre-Arraignment Procedure, similarly proposes to limit "the authority of the officer to arrest without a warrant for a misdemeanor not committed in the officer's presence to cases where the person to be arrested will not otherwise be apprehended, or where he might cause injury or unlawful loss or damage to property." ALI Model Code of Pre-Arraignment Procedure 290 (1975).

The approach of the ALI is endorsed by the Americans for Effective Law Enforcement in their amicus submission. The AELE opposes respondent's mandatory arrest policy and supports reversal to "hasten the adoption of flexible and reasonable statutes and policies on the subject of warrantless arrests for minor offenses." (AELE Br. 11.)

Nearly all states require more than probable cause before a peace officer may make a warrantless custodial arrest for a fine-only violation.[11] These limitations on warrantless arrests respect the intentions of the framers and require rejection of respondent's mandatory arrest policy at issue in this case.

VII. Conclusion

It is therefore respectfully submitted that the decision of the Court of Appeals should be reversed and the case remanded to the district court.

April, 1998

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11. The Chicago police rules show that the government is mistaken in its argument that these limitations on the power to make warrantless arrests raise "problems of practical implementation by officers on the street." (Gov't Br. 25.)

ADDENDUM

Chicago Police Department
General Order 87-9
(as amended by General Order 87-9a)

* * *

I. PURPOSE

This order:

A. continues use of the Ordinance Complaint form by Department members as an alternative to custodial arrests for certain classes of offenses.

B. sets forth policy and provides procedural guidelines for the issuance and control of Ordinance Complaint forms and related reports and documents.

II. GENERAL POLICY

A. Commanding officers will encourage members of their command to use the Ordinance Complaint in lieu of a physical arrest and detention in accordance with the provisions of this order.

B. With the exception of the restrictions set forth in Item III-C, an Ordinance Complaint form my be issued to any person 17 years of age or older who violates:

1. an ordinance of the City of Chicago which is punishable by fine only.

2. a petty offense or business offense as defined in the Illinois Revised Statutes for which a sentence of a fine only is provided.

3. an ordinance of the Chicago Park District which is punishable by fine only. (NOTE: The words "Park District" will be printed above the Municipal Code Box and the word "Municipal" will be lined out).

III. ENFORCEMENT POLICY

A.General Information

Ordinance Complaint forms may be used to enforce a variety of statutes and ordinances. However, the enforcement of certain laws (.e.g., building codes, weights and measures, etc.) require specific technical and/or legal knowledge and is therefore the primary responsibility of other City departments. Officers will assist these departments upon request. Enforcement action will be taken, however, on violations other than those traditionally enforced by the police when failure to do so would result in a breach of the peace or loss of pertinent evidence.

Note: For the purposes of this order, a breach of the peace is any act which caused or threatens injury or harm to any person, or loss of damage to any property.

B.Criteria for Issuance

An Ordinance Complaint form may be issued when

1. the citing officer is the complainant.
2. one citizen is the complainant against another
3. two or more citizens wish to sign cross-complaints against each other.

C.Restrictions

An Ordinance Complaint form will NOT be issued when

1. the charge involves a violation of a law relating to firearms.
2. the violator exhibits behavior which requires an officer to exert physical force to effect the arrest.
3. the violator requires medical attention, or is otherwise unable to care for his own safety or well being.

   a. After the violator receives medical attention, an Ordinance Complaint form may be issued, if all other considerations permit its use.

   b. Intoxicated persons who are unable to care for their own safety will not be issued Ordinance Complaint forms in the field, but will instead be processed in accordance with. the existing Department directive entitled "Handling the Public Inebriate."

4. the violator cannot or will not produce satisfactory evidence of identity.

   a. Satisfactory evidence of identity in defined as the amount of proof required to reasonably assure an officer that the violator is who he claim to be, taking into consideration the nature of the identification presented and the circumstances of the offense involved.

   b. If the violator cannot produce satisfactory evidence of identity, officers will attempt to verify any offered identification by independent means (e.g., telephone) if it is practicable to do so.

5. there is a reasonable, likelihood that the offense will continue or recur, or that life or property will be endangered if the violator is not arrested and removed from the scene of the occurrence
6. the prosecution of the offense in question would be jeopardized by a failure to make a physical arrest.
7. there is a reasonable likelihood that the violator will fail to appear in court. The following factors could provide reason to believe the violator would be unlikely to appear if released upon issuance of an Ordinance Complaint focus

a. The violator attempted to evade arrest.

b. The violator has failed to appear in court an previous occasions.

8. there is information available indicating that a warrant my be outstanding against the violator. In such situations a name check should be made before the Ordinance Complaint is issued.

9. the violator refuses to sign the Ordinance Complaint form to acknowledge receipt of it. The violator will be advised that his signature an the form is required as an acknowledgement that it has been received; it is not an admission of guilt.

NOTE: It the violator being cited refuses to sign the Ordinance Complaint form, normal arrest procedures will then be followed. If the form has been completed and the violator being cited subsequently refuse to sign, the form must be canceled according to Item IV-H of this directive.

* * *